

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

**DECISION AND ORDER**  
13-CR-84-A

BRIAN AVERY SMITH,

Defendant.

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This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b), for a change of plea proceeding under Fed. R. Crim. P. 11. The defendant, Brian Avery Smith, consented to the proceeding being before the Magistrate Judge. Dkt. No. 124.

On September 22, 2015, defendant Smith appeared before the Magistrate Judge and entered a plea of guilty to Count 1 of the Second Superseding Indictment under the terms and conditions of a Plea Agreement. Dkt. No. 125. Magistrate Judge Schroeder made an oral report and recommendation immediately after the change of plea proceeding, and filed a written Report and Recommendation (Dkt. No. 126) confirming that defendant's entry of a plea of guilty met the requirements of Fed. R. Crim. P. 11, and recommending that the Court accept the guilty plea. Dkt. No. 126. No objections to the Report and Recommendation were timely filed, and no extension of time to file objections was sought.

It is hereby **ORDERED**, pursuant to 28 U.S.C. 636(b), that Magistrate Judge Schroeder's Report and Recommendation, Dkt. No. 126, is adopted in its entirety, and that defendant Brian Avery Smith's plea of guilty under the terms and conditions of his Plea Agreement is accepted, and he is hereby adjudged guilty of violating 18 U.S.C. § 1344 as charged in Count 1 of the Second Superseding Indictment. A schedule for sentencing filings and proceedings will issue.

**IT IS SO ORDERED.**

*Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: October 15, 2015